PRIVY COUNCIL REPORTS

ENG CHUAN & COMPANY AND OTHERS v. FOUR SEAS COMMUNICATIONS BANK LIMITED

[P.C. (Lord Diplock, Lord Elwyn-Jones, Lord Keith of Kinkel, Lord Lowry & Lord Brandon of Oakbrook) February 8 & March 29, 1982]
[Privy Council Appeal No. 53 of 1980]

Landlord and Tenant – Rent-controlled premises – Claim for recovery of possession – Contractual tenants – Statutory tenants – Control of Rent Act (Cap. 266), s. 14.

In this case the premises originally belonged to one Tan Chu Hean, when it was let to one Lee Siew Pan in his business name of Eng Chuan & Co. Tan Chu Hean sold the reversion to Chin Hwa Hin in 1948 or 1949. In 1951 Eng Chuan & Co. became a partnership when Lee Siew Pan brought in five other persons to be partners. Subsequently in 1953 Lee Siew Pan and two other partners withdrew from the partnership leaving the three persons, the personal appellants, who claimed to be the tenants of the premises. Rent was demanded and paid in the business name, the business then consisting of the three persons. In 1964 the respondent bank acquired the reversion to the premises subject to the monthly tenancy. After the acquisition of the reversion by the respondents, the partnership in whose business name the rent was demanded by the bank and paid, continued to carry on its trade there for another seven years. In 1971 the firm ceased trading but the personal appellants remained in joint occupation of the premises and rent continued to be demanded from them by the bank and paid by them in the firm's name.

In 1976 the respondents through their solicitors gave a notice to quit to "Eng Chuan & Co.". They subsequently brought an action to recover possession of the premises.

The learned District Judge decided the case in favour of the respondent's claim for possession and mesne profits upon the ground that the tenant under the only contractual tenancy of the premises that had existed at the date of the service of the notice to quit, had continued to be Lee Siew Pan, to whom an oral monthly tenancy had been granted by the then owner of the freehold in 1946. He held that the three personal appellant's occupation of the premises since 1953 when Lee Siew Pan retired from the partnership was as mere licensees of Lee Siew Pan.

The appeal to the High Court was allowed by D'Cotta J. who drew from the evidence the inference of fact that at the time when the bank purchased the reversion from Chin Hwa Hin in 1964, the premises were subject to a monthly oral tenancy to the three personal appellants. Nothing happened after the respondents purchased the premises to alter the tenancy subject to which the premises were purchased.

The respondents appealed to the Court of Appeal which held that there was no evidence that the respondents had entered into a new agreement creating a new tenancy in favour of the personal appellants. That being so the only other way by which the three persons could have become the tenants of the respondents would have been by way of a tenancy by estoppel. As estoppel had not been pleaded it was not available and so the appeal was allowed – See [1981] 1 M.L.J. 4. The appellants appealed to the Privy Council.

Held, no reason was given by the Court of Appeal for rejecting the inference of fact which had been drawn by the learned judge of the High Court that the personal appellants had at some time in the course of the previous ten years before the purchase of the premises by the respondents been granted a monthly oral tenancy by the respondent's predecessor in title. That inference of fact was irresistible and therefore the appeal must be allowed and the judgment of the High Court restored.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Alan Sebestyen for the appellants.

R. Johnson Q.C. (*Mrs. D. Le Pichon* with him) for the respondents.

Lord Diplock (delivering the judgment of the Board): This appeal is brought in proceedings commenced by the respondents ("the Bank") in the District Court of Singapore against the appellants and two other defendants, who have since dropped out, to recover possession of premises, Nos. 61, 61A and 61B Chulia Street, Singapore ("the Premises"). The first appellants, sued in the firm's name "Eng Chuan and Company" ("the Firm"), are three individuals, Lee Chay Tian, Lee Chay Kia and Lee Chay Song ("the personal appellants"), who claim to have been statutory tenants of the Premises at the date of commencement of the proceedings on April 6, 1977, and so protected by section 14 of the Control of Rent Act from recovery of possession of the Premises by their landlord, the Bank. The other appellants do not claim to have been at any time tenants or sub-tenants or to be entitled to possession of the Premises or any part thereof; such use as any of them made of the Premises was at all relevant times as licensees of the Firm only. The only issue in this appeal is whether the personal appellants sued in the name of the Firm are statutory tenants of the Bank; and this depends on whether immediately before February 29, 1976, when notice to quit served on them in the Firm name by the Bank expired, the personal appellants were in possession of the Premises under an oral contractual monthly tenancy.

The Bank's title to the reversion to the contractual tenancy, prior to what the personal appellants claimed to be its conversion into a statutory tenancy under the Control of Rent Act, was never put in issue, nor was the derivation of the Bank's title to the freehold interest in the Premises which it acquired in 1964 a matter of dispute. In the result the significance of the Bank's own root of title does not appear to have emerged in the course of the hearing before the District Judge; and oral evidence was given, without objection, by witnesses for both the Bank and the Firm of matters which ought in strictness to have been proved by documentary evidence. From this evidence it is possible to follow, albeit somewhat sketchily, the conveyancing history of the reversion to whatever oral monthly tenancy existed from time to time since the first oral monthly tenancy was granted in what was to become the Firm name "Eng Chuan and Company" to a single trader, Lee Siew Pan, who was then trading under that name as a retailer of provisions.

The original owner of the reversion and landlord of the Premises, when the first oral monthly tenancy was granted to Lee Siew Pan in his business name of Eng Chuan and Company, was someone called Tan Chu Hean; but he sold the reversion in 1948 or 1949 to another individual Chin Hwa Hin, who was also a provision dealer. In January 1951, Eng Chuan and Company became a partnership; five other members of Lee Siew Pan's family were admitted as partners and their names were entered as such in the Register of Business Names. They consisted of the three personal appellants who claim to be joint statutory tenants of the Premises and are sued in the present proceedings in the name of the Firm. The other two partners together with Lee Siew Pan withdrew from the partnership on December 31, 1953 and their withdrawal was duly entered in the Register of Business Names. So for ten years from that date, while Chin Hwa Hin was entitled to the reversion and

the rent was paid to him, until 1964 when the Bank acquired the reversion to the Premises subject to the oral monthly tenancy as it existed at the date of acquisition, the partnership in whose business name the rent was demanded and paid consisted of the personal appellants who claim to have remained contractual tenants until the expiry of the notice to quit on February 29, 1976 and to have become statutory tenants of the Premises thereafter.

After the acquisition of the reversion by the Bank the partnership, in whose business name the rent was demanded by the Bank and paid, continued to carry on its trade there for another seven years. In 1971 it ceased trading and the Firm name and particulars of membership were accordingly removed from the Register of Business Names; but the three personal appellants remained in joint occupation of the Premises and rent continued to be demanded from them by the Bank and paid by them in the Firm name.

The notice to quit dated January 29, 1976, addressed by solicitors on behalf of the Bank to "Eng Chuan & Co." acknowledges the existence of a tenancy in the person or persons to whom that description properly applies, since it requires them to "quit and deliver up" possession of the Premises "on the 29th day of February 1976 (or at the expiration of the month of your tenancy which will expire next after the end of one calendar month from the time of the service of this Notice)". The only persons to whom that description properly applied, and had done so ever since December 31, 1953, were the three personal appellants whose names had appeared in the Register of Business Names as constituting the Firm of Eng Chuan and Company from December 31, 1953 until it ceased trading in 1971. In their Lordships' view, if the Bank sought to rely upon the monthly tenancy being vested in someone other than the personal appellants as tenant under that description, the onus lay upon the Bank to prove it.

The learned District Judge decided the case in favour of the Bank's claim for possession and mesne profits upon the ground that the tenant, under the only contractual tenancy of the Premises that had existed at the date of the service of the notice to quit, had continued to be Lee Siew Pan to whom an oral monthly tenancy had been granted by the then owner of the freehold in 1946. Lee Siew Pan, although still alive but ailing, was not a party to the action, so no claim by him for protection under the Control of Rent Act was before the District Judge, who held that the personal appellants' occupation of the Premises since 1953 when Lee Siew Pan retired from the partnership was as mere licensees of Lee Siew Pan.

Upon appeal to the High Court from the judgment for possession and mesne profits D'Cotta J. drew from the evidence the inference of fact: that, at the time when the Bank purchased the freehold from Chin Hwa Hin in 1964, the Premises were subject to a monthly oral tenancy to the three personal appellants. This inference, in their Lordships' view, was irresistible. The transfer of the tenancy from Lee Siew Pan to the personal appellants would not have been by way of assignment which, as D'Cotta J. recognised, would have to be made by deed; but that would be an unusual and expensive way of effecting a change of tenant under an oral monthly tenancy, when all that was needed was a surrender by Lee Siew Pan of his monthly tenancy to take effect on December 31, 1953, when he retired from the partnership, (or at the end of any month thereafter) and the grant by the owner of the freehold, Chin Hwa Hin, of a fresh oral monthly tenancy to the remaining three partners in the Firm, the personal appellants. The Bank after they acquired the freehold may have been, as they claimed in evidence, indifferent as to who the persons were to whom they looked for payment of the rent. They may have been content with an airy nothing, so long as it was given a local habitation and a name.* But Chin Hwa Hin, an individual in the same line of business as the Firm, is unlikely to have wished to rely for his rent solely upon a retired partner in the Firm rather than upon the three partners who were actively carrying on the business at the Premises; and it defies credulity that in the following ten years until 1964, during which he remained the landlord, he did not know who were the persons who throughout that period composed the Firm from which he had demanded and collected the rent as tenant.

This inference, if correct, was sufficient to dispose of the Bank's claim to obtain possession of the Premises and to justify D'Cotta J. in allowing the appeal; for nothing happened after the Bank purchased the Premises to alter the tenancy subject to which the Premises were purchased. [The Bank had originally relied upon the de-registration of the Firm name in 1971 as somehow affecting the existence of the tenancy but this argument was, sensibly, abandoned before the District Judge.]

In the Bank's appeal to the Court of Appeal from the judgment of the High Court this inference drawn by the learned Judge, although included in the extracts from D'Cotta J.'s judgment that were cited in the judgment of the Court of Appeal, did not receive any further notice. That court concentrated their attention on the period after the Bank had become owners of the freehold in the Premises and said: "There is no evidence that the Bank had entered into a new agreement creating a new tenancy in favour of [the personal appellants]. This being so, the only other way by which these three persons could have become the tenants of the Bank would have been by way of a tenancy by estoppel." The court went on to say that as estoppel had not been pleaded it was not available to the personal appellants.

In their Lordships' view, this analysis of the legal status of the personal appellants, in relation to a tenancy which the Bank admitted was in existence when notice to quit was served, starts too late. It is directed only to changes in the tenancy which occurred after the Bank had purchased the freehold of the Premises in 1964. It assumed that the personal appellants had not at some time in the course of the previous ten years been granted a monthly oral tenancy by the Bank's predecessor in title Chin Hwa Hin; and this is contrary to the inference of fact that had been drawn by D'Cotta J. No reason was given by the Court of Appeal for rejecting that inference which, for reasons which they have already given, their Lordships themselves regard as irresistible. They therefore allow the appeal and restore the judgment of the High Court. The respondents must pay the appellants' costs in the appeal to this Board and in the Court of Appeal.

Appeal allowed.

* Midsummer Night's Dream Act. V. sc. 1.